

February 23, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint of
CORY RANDON LEWIS,

Petitioner.

Nos. 55956-1-II

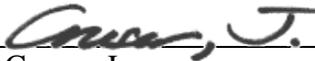
UNPUBLISHED OPINION

CRUSER, J.—Cory Randon Lewis seeks relief from personal restraint imposed following his 2016 judgment and sentence finding him guilty of second degree murder and first degree unlawful possession of a firearm. At sentencing, a 2006 conviction for unlawful possession of controlled substances was included in his offender score. He argues that under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021), which held former RCW 69.50.4013(1) (2017), the statute making possession of controlled substances illegal, to be unconstitutional, he is entitled to be resentenced with the 2006 conviction removed from his offender score. The State concedes that under *Blake*, Lewis is entitled to be resentenced.

We agree. When a conviction is based on an unconstitutional statute, that conviction cannot be considered in calculating the offender score. *See State v. Ammons*, 105 Wn.2d 175, 187-88, 713 P.2d 719, 718 P.2d 796 (1986).

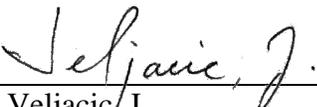
Accordingly, we remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Cruser, J.

We concur:



Veljacic, J.



Price, J.